

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Brian Schaitkin	Team: Team # 8	CCRB Case #: 200606889	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Thursday, 04/20/2006 12:01 AM	Location of Incident: 16-12 Mott Avenue (101st precinct)	Precinct: 101	18 Mo. SOL 10/20/2007	EO SOL 10/20/2007	
Date/Time CV Reported Wed, 05/24/2006 8:55 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 05/26/2006 12:44 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. An officer			
2. SGT Carlos Fabara	01279	922317	101 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Joseph Zappia	13701	936014	101 PCT
2. SGT Michael Billotto	00819	903074	101 PCT

Officer(s)	Allegation	Investigator Recommendation
A. An officer	Force: An officer used physical force against § 87(2)(b)	
B.SGT Carlos Fabara	Force: Sgt. Carlos Fabara used a taser against § 87(2)(b)	
C.SGT Carlos Fabara	Force: Sgt. Carlos Fabara used physical force against § 87(2)(b)	
D.SGT Carlos Fabara	Off. Language: Sgt. Carlos Fabara made remarks to § 87(2)(b) based upon race.	
E.SGT Carlos Fabara	Discourtesy: Sgt. Carlos Fabara spoke obscenely to § 87(2)(b)	

### Synopsis

On April 20, 2006, at 3:17 AM § 87(2)(b) was arrested by Sgt. Carlos Fabara and PO Joseph Zappia of the 101<sup>st</sup> Precinct in the vicinity of Beach 26<sup>th</sup> Street and Seagirt Boulevard in Far Rockaway, NY. § 87(2)(b) alleged that after being taken to the 101<sup>st</sup> Precinct station house he was punched by an officer near the desk (**Allegation A**) and that an officer later identified as Sgt. Carlos Fabara used a taser against him (**Allegation B**), kicked him while subduing him after using the taser (**Allegation C**), called him “a nigger” (**Allegation D**) and told him that § 87(2)(b) could “have his fucking CAT scan” after § 87(2)(b) had been taken to § 87(2)(b) (**Allegation E**). § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

### Summary of Complaint

§ 87(2)(b) § 87(2)(b) s § 87(2)(b) attorney, filed this complaint on § 87(2)(b) s behalf by phone with IAB on May 24, 2006 (**Enclosures 4a-c**). IAB referred this case to the CCRB on May 26, 2006. § 87(2)(b) did not directly provide an initial account regarding his complaint to the CCRB, however a statement he made at § 87(2)(b) was found during the course of this investigation.

#### § 87(2)(b) s Statement to § 87(2)(b) at § 87(2)(b) (**Enclosure 15c**)

On § 87(2)(b), § 87(2)(b) informed § 87(2)(b) that he had become involved in an altercation with police. He reported that officers used a taser gun several times when one of the prongs got stuck in his abdomen. He reports that when the taser struck him he fell and hit his head at the stationhouse. § 87(2)(b) claimed to be experiencing pain on his right hip and his right jaw.

#### § 87(2)(b) Statement at Rikers Island (**Enclosures 6a-d**)

On June 23, 2006, § 87(2)(b) a 6’2” 230 pound black male, was interviewed at the § 87(2)(b) on Rikers Island.

On April 20, 2006, between 3:00 AM and 4:00AM, § 87(2)(b) was arrested for § 87(2)(b) and taken to the 101<sup>st</sup> Precinct. The arrest was made by two officers, PO1, a 5’8” 160 pound white male who was 27 years old, had a crew cut and was wearing a uniform, later identified as Sgt. Carlos Fabara, and PO2, a 5’9” 175 pound white male officer wearing a striped shirt, a tie and sneakers. These officers saw § 87(2)(b) on the block with a large generator and concluded that he had stolen it. § 87(2)(b) did not state whether he had in fact stolen the generator during his interview. Based upon previous encounters with this second officer § 87(2)(b), § 87(2)(f) § 87(2)(b) thought that Sgt. Fabara was a sergeant with the 101<sup>st</sup> Precinct Detective Squad. Because these officers had arrested him together, § 87(2)(b) thought that Sgt. Fabara and PO2 were partners. After his arrest, § 87(2)(b) was brought to the 101<sup>st</sup> Precinct station house. He knew that his arresting officer was named “PO Zappia,” whom he claims was wearing a uniform. Therefore, he did not think that PO Zappia is PO2.

When § 87(2)(b) arrived at the station house, PO Zappia searched him and removed objects from his pocket. § 87(2)(b) asked the lieutenant at the front desk, PO3, a chubby white male with a mustache who wearing a uniform, why he had been arrested. PO3 told him not to worry about it and sent him to the holding cell. § 87(2)(b) said he would not go until he was told why he had been arrested. Sgt. Fabara punched § 87(2)(b) in the face with his left hand. The punch landed near § 87(2)(b) s jaw. Sgt. Fabara then grabbed him on his left arm to bring him to a holding cell. Later in the interview, § 87(2)(b) § 87(2)(b) claimed that PO2, rather than Sgt. Fabara grabbed his arm, punched him with his right hand and brought him to the cell.

After § 87(2)(b) was taken to the holding cell, he asked officers to remove the “fucking handcuffs.” Sgt. Fabara told § 87(2)(b) to shut up, sit down and be quiet. § 87(2)(b) explained to Sgt. Fabara that he needed to spit. Sgt. Fabara told him that if § 87(2)(b) began spitting he would use a taser against § 87(2)(b). § 87(2)(b) began spitting on the floor but told the officers that he would not spit on them. Sgt. Fabara threatened to “stun gun” § 87(2)(b) if he did not stop spitting. § 87(2)(b) stopped spitting and began lying on the floor of his cell. The officers left the scene. Later in the interview, § 87(2)(b) claimed that he had asked Sgt. Fabara why PO2 needed to punch him. Sgt. Fabara told him to shut up and asked him why he needed to act like such a tough guy. § 87(2)(b) then began spitting up blood. Sgt. Fabara told § 87(2)(b) to stop spitting and asked § 87(2)(b) if he was spitting at him. Sgt. Fabara threatened to taser on § 87(2)(b) if he continued spitting. No other prisoners were with § 87(2)(b) when he was in the cell. § 87(2)(b) claimed that there was a camera on the ceiling of the cell.

A half-hour later, Sgt. Fabara returned to the cell holding a taser. PO2 and a number of other officers with the detective squad accompanied him to the holding cell. Sgt. Fabara ordered § 87(2)(b) to stand up and take his sneakers off. § 87(2)(b) complied with these orders by taking his sneakers off with his feet. Sgt. Fabara then told § 87(2)(b) to back up. After § 87(2)(b) backed up, Sgt. Fabara used his stun gun against § 87(2)(b) firing two shots from a distance of six or seven feet. § 87(2)(b) fell forward and hit the bars of the cell with the left side of his forehead. He believes that the initial shot hit him in his chest. The undersigned investigator observed on the date of the interview that one taser wound was located on the left side of § 87(2)(b)'s abdomen while the other was on the left side of his chest. After § 87(2)(b) fell to the ground, on his stomach, Sgt. Fabara kicked him. Later in the interview, § 87(2)(b) claimed that Sgt. Fabara ordered § 87(2)(b) to roll over before kicking § 87(2)(b) in his right side. Immediately thereafter, Sgt. Fabara started “juicing” § 87(2)(b) by using the rounds implanted into § 87(2)(b) in order to send small amounts of electricity to him in an effort to force him to comply. The officers ordered him to roll over or he would have to stun gun him again. When § 87(2)(b) rolled over again, Sgt. Fabara shot § 87(2)(b) in the stomach with the taser and asked, “How do you like that you dirty fucking nigger” or “you dirty nigger.” § 87(2)(b) requested that an ambulance take him to a hospital. Officers told him that the ambulance was already on its way. As a result, § 87(2)(b) believed that officers knew they were going to stun gun him and were already preparing for this event to occur.

§ 87(2)(b) walked to the ambulance outside. PO2 was also in the ambulance. When § 87(2)(b) arrived at the hospital, Sgt. Fabara came to uncuff him. He told § 87(2)(b) that he would get his “fucking CAT scan” and that if he acted up again Sgt. Fabara would stun gun him again. Sgt. Fabara left and § 87(2)(b) was examined using a CAT scan. After it was completed he was released from the hospital and arraigned at Queens Central Bookings.

§ 87(2)(b) had dealt with Sgt. Fabara prior to this incident, § 87(2)(b), § 87(2)(e), § 87(2)(f)

**Notice of Claim filed by § 87(2)(b) against The New York City Police Department and the City of New York. (Enclosures 7a-d)**

On § 87(2)(b) § 87(2)(b) and his attorney § 87(2)(b) filed suit against the NYPD and the City of New York alleging that “a New York City Police Department Sergeant and officers employed by the 101<sup>st</sup> Precinct shot Claimant with a stun gun while Claimant was handcuffed and inside a cell at the 101<sup>st</sup> Precinct.” The claim additionally alleges that officers “beat claimant and subjected Claimant to racial verbal abuse by repeatedly calling him ‘nigger’” and that the sergeant and officers “repeatedly threatened the use of additional force against claimant.” The suit seeks \$1,500,000 in damages. No 50H hearing has been held at this time because § 87(2)(b) is still incarcerated.

## **Results of Investigation**

### **Officer Statements**

#### **PO Zappia**

##### **Complaint Report (Enclosures 8a-b)**

On April 20, 2006 at 2:30 AM, PO Joseph Zappia observed § 87(2)(b) wheeling a Bobcat compressor/generator at the corner of Beach 26<sup>th</sup> Street. When asked where he got it from, he stated that he got it from a lady named § 87(2)(b) who lived at Beach 30<sup>th</sup> Street. When officers contacted § 87(2)(b) she stated that she did not know § 87(2)(b) and had no knowledge of the equipment. § 87(2)(b) then told officers that the generator belonged to his uncle but he did not provide any contact information. PO Zappia and Sgt. Carlos Fabara conducted a canvass of a construction site located at 121 Beach 25<sup>th</sup> Street. They observed that the front entrance was damaged and three other generators were within the premises. Tread marks in the sand, footprints, which PO Zappia believed belonged to § 87(2)(b) and the inaccuracy of § 87(2)(b)'s story provided the officers with probable cause to arrest him. PO Zappia spoke with § 87(2)(b), the manager of the construction site the next morning at 8AM. § 87(2)(b) stated that there were four generators on site and that one of them was missing. PO Zappia showed § 87(2)(b) a picture of the generator he had seen § 87(2)(b) with the previous night and § 87(2)(b) confirmed that it was his generator.

##### **Arrest Report (Enclosure 24a)**

PO Joseph Zappia arrested § 87(2)(b) on April 20, 2006 at 3:00 AM in the vicinity of Beach 26<sup>th</sup> Street and Seagirt Boulevard. He claimed that at that date and time § 87(2)(b) entered a construction site at 121 Beach 25<sup>th</sup> Street and removed a Bobcat compressor without permission or authority to do so. § 87(2)(b) was charged with § 87(2)(b).

##### **Memo Book (Enclosures 9a-c)**

PO Joseph Zappia stopped one male at Beach 26<sup>th</sup> Street and Seagirt Avenue on April 20, 2006 at 2:30 AM. He conducted a canvass at 2:45 AM and arrested § 87(2)(b) at 3:17 AM.

##### **CCRB Statement (Enclosures 10a-b)**

On August 2, 2006 PO Joseph Zappia, a 5'9" white officer, was interviewed at the CCRB. PO Zappia has been assigned to the 101<sup>st</sup> Precinct for two years. PO Zappia was wearing a uniform on the date of the incident.

On April 20, 2006 at approximately 2:30 AM, PO Zappia was driving marked police truck RMP 5289 and was working with the patrol supervisor, Sgt. Carlos Fabara. They observed § 87(2)(b) pushing a generator at the corner of Beach 26<sup>th</sup> Street and Seagirt Boulevard in Far Rockaway, NY. Based on the time of day and the fact that a gate to a nearby construction site was broken open, they arrested § 87(2)(b) for attempting to steal the generator. While § 87(2)(b) was angry about being stopped, he did not behave in a manner that led PO Zappia to believe that he was intoxicated or was an emotionally disturbed person. After § 87(2)(b) was arrested, he was taken to the precinct by a sector car. PO Zappia and Sgt. Fabara returned to the precinct in the truck, which they used to tow the generator back to the precinct.

When he returned to the precinct, PO Zappia sat at the desk in order to begin processing § 87(2)(b)'s arrest. By the time they arrived, § 87(2)(b) had been placed in a holding cell. While processing the arrest, PO Zappia heard § 87(2)(b) screaming, cursing and making threats against officers from his cell. He left the desk and went out to observe § 87(2)(b)'s behavior. When he walked to the vicinity of the cell area, PO Zappia saw § 87(2)(b) was spitting onto a table outside of the cell and repeatedly hitting his head against the cell bars and walls. PO Zappia reported what he saw to Sgt. Fabara and informed him that § 87(2)(b) was behaving like an EDP because he was endangering himself. He did not see any physical injuries on § 87(2)(b)'s head or face as a result of his actions.

Sgt. Fabara and one or two other officers whose identity PO Zappia could not recall went to observe § 87(2)(b) in order to determine what action to take so that he would not injure himself. PO Zappia returned to the desk and continued processing the arrest. He heard some screaming and yelling but otherwise did not witness the confrontation between Sgt. Fabara and § 87(2)(b) that ultimately led the sergeant to use a taser against § 87(2)(b). He did not hear Sgt. Fabara call § 87(2)(b) a nigger. PO Zappia saw § 87(2)(b) as he was being taken out by EMS and did not see any physical injuries on § 87(2)(b). He did not accompany him or visit him at § 87(2)(b).

### **Sgt. Carlos Fabara Statements**

#### **Utilization of M-26 Taser Memorandum (Enclosures 11a-b)**

Sgt. Carlos Fabara stated that he used an M-26 Taser in order to restrain § 87(2)(b) at 3:50 AM on April, 20, 2006, within the confines of the 101<sup>st</sup> Precinct station house. At 3:17 AM, Sgt. Fabara and PO Joseph Zappia arrested § 87(2)(b) for § 87(2)(b). When § 87(2)(b) returned to the 101<sup>st</sup> Precinct station house, he became violent as officers led him from the desk area to the cell area. Once he was placed in the cell, § 87(2)(b) began spitting on officers, banging his head against the bars of the holding cell and threatening to commit suicide. Sgt. Fabara directed that § 87(2)(b) be handcuffed for his safety at which point § 87(2)(b) became physically violent. Sgt. Fabara used an M-26 Taser to “restrain § 87(2)(b) facilitate handcuffing to overcome a potential assault.” § 87(2)(b) was handcuffed without further incident. He was then taken to § 87(2)(b) for evaluation and treatment.

#### **Property Voucher (Enclosure 12)**

Sgt. Fabara completed a property voucher on April 20, 2006 for “discharged M-26 Taser Cartridge” serial # A47253 and for two taser darts.

#### **CCRB Statement (Enclosures 13a-b)**

Sgt. Carlos Fabara, a 5’11” Hispanic male sergeant who has been assigned to the 101<sup>st</sup> Precinct for two years, was interviewed at the CCRB on August 2, 2006. Sgt. Fabara was wearing a uniform on the date of the incident.

On April 20, 2006, at approximately 2:30 AM, Sgt. Fabara was working as patrol supervisor with PO Joseph Zappia out of a marked police 4 X 4, when they observed § 87(2)(b) pushing a large generator. Suspecting that § 87(2)(b) might have stolen the generator, Sgt. Fabara stopped him and asked what he was doing. § 87(2)(b) gave inconsistent answers heightening the officers’ suspicions about his activities. After the officers observed that the gate of a nearby construction site was “busted open” and that footprints leading from the construction site were consistent with § 87(2)(b)'s shoes, § 87(2)(b) was arrested. Sgt. Fabara described § 87(2)(b)'s demeanor as being nervous because he was turning his head in multiple directions as if looking for an escape route after he was stopped. According to the sergeant, § 87(2)(b) was answering his questions in a coherent if evasive manner and was not exhibiting any behaviors that would have lead him to conclude that § 87(2)(b) was an EDP. He did not think that § 87(2)(b) was intoxicated. A sector patrol car transported § 87(2)(b) back to the 101<sup>st</sup> Precinct station house. Sgt. Fabara and PO Zappia attached the generator to their vehicle and towed it back to the stationhouse.

When Sgt. Fabara arrived at the stationhouse, § 87(2)(b) was already in a cell. He had not yet heard any reports about § 87(2)(b) behavior at the front desk. He began supervising as PO Zappia processed § 87(2)(b)'s arrest at the desk, which is close to the holding cell. Sgt. Fabara began hearing § 87(2)(b) screaming, cursing and making threats to kill officers from his cell. When Sgt. Fabara left the desk and walked towards the holding cell, he observed § 87(2)(b) spitting on nearby desks and chairs outside of the cell as well as on the fingerprinting machine. § 87(2)(b) continued spitting for about twenty minutes. Shortly thereafter, § 87(2)(b) hit his head on the cell gate at least three times. Based on these actions, Sgt. Fabara concluded that § 87(2)(b) was behaving like an emotionally disturbed person and represented a danger to himself. The sergeant did not recall whether § 87(2)(b) injured himself by hitting his head in this fashion. In order to prevent § 87(2)(b) from harming himself, the sergeant sought to restrain him. He grabbed handcuffs and a taser and entered the cell with one or two other officers. Sgt. Fabara could not recall the identity of these officers. Before entering the cell, the sergeant informed § 87(2)(b) that he was going to be handcuffed. He ordered § 87(2)(b) to place his hands behind his back and told him not to do anything "crazy" so that he would not have to use the taser against him. At first, § 87(2)(b) seemed like he would comply with Sgt. Fabara's orders because he turned around and placed his hands behind his back. However he then began pacing back and forth and screaming in the back of the cell. When Sgt. Fabara opened the gate, § 87(2)(b) lunged at him in order to attack him. To protect himself from § 87(2)(b) Sgt. Fabara used the taser against § 87(2)(b). Both prongs struck § 87(2)(b) and the charge from the taser caused § 87(2)(b) to collapse to the ground. Sgt. Fabara attempted to handcuff § 87(2)(b). However when the initial five-second charge from the taser stopped, § 87(2)(b) continued his resistance by kicking and screaming. This behavior prevented Sgt. Fabara from handcuffing him. Therefore, Sgt. Fabara sent another charge through the taser and pushed § 87(2)(b) onto his stomach, handcuffed him and placed him on the bench in the cell. The officer who had accompanied him to the scene assisted Sgt. Fabara in handcuffing § 87(2)(b). Sgt. Fabara denied kicking § 87(2)(b) and calling him a nigger.

Either prior to using the taser against § 87(2)(b) or after using the taser against him, Sgt. Fabara called for an ambulance. When the ambulance arrived, § 87(2)(b) was taken to a hospital that Sgt. Fabara could not recall. While Sgt. Fabara went to this hospital, he did not accompany § 87(2)(b) in the ambulance. When he arrived at the hospital, Sgt. Fabara spent some time speaking with the officer in charge of guarding § 87(2)(b). He also saw § 87(2)(b) lying down in a hospital bed. However, he did not observe § 87(2)(b) engaging in any behavior that would be associated with an emotionally disturbed person. He denied threatening to taser § 87(2)(b) and telling § 87(2)(b) that he could have "his fucking cat scan."

Sgt. Fabara had previously interacted with § 87(2)(b). § 87(2)(b) The sergeant had not seen § 87(2)(b) exhibit behaviors associated with EDPs prior to April 20, 2006.

#### **Attempts to Interview other Officers (Enclosures 25a-d)**

The CCRB scheduled an interview with the desk officer, Sgt. Michael Billotto on February 14, 2007. Prior to this date, Sgt. Billotto went on sick leave. The CCRB tried again to schedule an interview with Sgt. Billotto on February 20, 2007, however Spa. Bennett of the 101<sup>st</sup> Precinct stated that the sergeant was still on sick leave and had already been on sick leave for over one month. As a result, the CCRB could not interview him as part of this investigation.

#### **Police Documents**

##### **Arrest Photo (Enclosure 19)**

§ 87(2)(b)'s arrest photos do not show any visible facial injuries.

### **Command Log (Enclosures 21a-b)**

§ 87(2)(b) was arrested and brought to the 101<sup>st</sup> Precinct station house on April 20, 2006 at 3:17 AM. He was brought to the emergency room at § 87(2)(b) at § 87(2)(b) and returned to the 101<sup>st</sup> Precinct station house at 7:20 AM. § 87(2)(b)'s condition was listed as apparently normal.

### **Roll Call (Enclosures 22a-j)**

The April 20, 2006 Roll Call for the 101<sup>st</sup> Precinct indicates that PO Brett Henry went to § 87(2)(b) with a prisoner during this tour.

### **Prisoner Holding Pen Roster (Enclosures 20a-b)**

§ 87(2)(b) was placed into a holding cell at 7:30 AM on April 20, 2006 by PO Joseph Zappia. PO Zappia checked on § 87(2)(b) six times until he was taken to Queens Central Bookings at 1:46 PM on that date. No entry was made in the holding pen roster for § 87(2)(b) prior to 7:30 AM. At 3:25 AM, the time at which § 87(2)(b)'s arrest was entered into the command log, no prisoners were in the 101<sup>st</sup> Precinct holding cells. No entry was made in the prisoner holding pen roster to reflect that § 87(2)(b) was placed in a holding cell prior to 7:30 AM.

### **Medical Records**

#### **Ambulance Call Report (Enclosures 14a-d)**

On April 20, 2006, § 87(2)(b) was taken from the 101<sup>st</sup> Precinct stationhouse at 16-12 Mott Avenue at § 87(2)(b) where he arrived at § 87(2)(b). Two EMS personnel, a driver and a technician were on board. The report indicated that § 87(2)(b) had suffered burn, pain and soft tissue injuries to his chest and lower abdomen. The causes of these injuries were "electric injury" and "fight/assault." § 87(2)(b)'s breathing and pulse were normal.

§ 87(2)(b) complained that police assaulted him. The police informed EMS personnel that § 87(2)(b) had been tasered once in the chest and once in the lower abdomen. Taser prongs were not removed because § 87(2)(b) was aggressive on scene and was shouting obscenities.

#### **§ 87(2)(b) Treatment of § 87(2)(b) (Enclosures 15a-p)**

§ 87(2)(b) was admitted to § 87(2)(b) at § 87(2)(b). Medical Personnel removed taser projectiles from § 87(2)(b) that were embedded to the left of his chest wall and in the middle of his abdomen.

A CAT scan of § 87(2)(b)'s head was also conducted at § 87(2)(b) on § 87(2)(b). The scan was conducted Emergency Room Technician § 87(2)(b). The CAT scan yielded a normal result.

#### **§ 87(2)(b)'s second visit to § 87(2)(b) (Enclosures 16a-I)**

On § 87(2)(b), § 87(2)(b) was again admitted to § 87(2)(b). He was taken to the hospital while under police custody for psychological evaluation because the patient stated that he had been depressed for two days and wanted to hang himself. All physical signs were normal however he was diagnosed with depression. § 87(2)(b) was discharged into law enforcement custody at § 87(2)(b) on that date.

### **Pre-Arraignment Screening Form for Correction Health Services (Enclosures 18a-w)**

On April 20, 2006 at 2:35 PM, § 87(2)(b) was taken to Queens Central Bookings. During his pre-arraignment screening examination, § 87(2)(b) stated that he wanted to hang himself. The evaluating physician referred him for psychological evaluation.

### **Medical Treatment of Prisoner Form (Enclosure 17)**

§ 87(2)(b) was escorted by PO Justin Rivera to § 87(2)(b) on § 87(2)(b) for psychological evaluation. Handcuffs and leg restraints were used on § 87(2)(b)

### **Court Documents**

#### **§ 87(2)(b) Conviction History (Enclosures 24a-r)**

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

#### **Sgt. Fabara CCRB History (Enclosures 2a-d)**

Sgt. Fabara has had several CCRB allegations substantiated against him including: , abuse premises entered and/or searched, refusal to provide name/shield, authorizing the detention of an individual and authorizing a frisk in case 200508693, abuse- question/stop and abuse-frisk in case number 200511684, abuse-question/stop and abuse-frisk in case number 200512992 and refusal to provide name/shield and abuse-frisk in case 200606723. The Civilian Complaint Review Board recommended charges for all of these substantiated allegations. However, no record is available to show what sanctions if any Sgt. Fabara received as a result of his conduct in these matters.

### **Conclusions and Recommendations**

#### **Officer Identification**

§ 87(2)(b) contradicted himself by saying during one portion of the interview that the sergeant who tasered him also punched him in front of the desk and then claims during another part of his interview that it was the partner of this sergeant who punched him. § 87(2)(g)

§ 87(2)(b) clearly stated that the sergeant who tasered him, used physical force against him and spoke both in a racially offensive and obscene manner towards him. Sgt. Fabara admitted both in his Taser usage report and in his CCRB statement that he used a taser against § 87(2)(b) § 87(2)(g)



## Undisputed Facts

The following factual issues are not in dispute in this case. On April 20, 2006 at 3:17 AM PO Joseph Zappia and Sgt. Carlos Fabara arrested § 87(2)(b) for attempting to steal a Bobcat generator in the vicinity of Beach 26<sup>th</sup> Street and Seagirt Boulevard in Far Rockaway, NY. § 87(2)(b) was transported back to the 101<sup>st</sup> Precinct station house and then was placed in a holding cell. While § 87(2)(b) was in the holding cell, he began spitting. Sgt. Fabara used a taser against § 87(2)(b). PO Zappia, Sgt. Fabara and § 87(2)(b) also agreed that at some point § 87(2)(b)'s face struck the bars of the cell. After § 87(2)(b) was subdued by officers, he was taken to § 87(2)(b) at § 87(2)(b) where the taser prongs were removed from his chest and abdomen and a cat scan was performed on § 87(2)(b). Sgt. Fabara came to § 87(2)(b) while § 87(2)(b) was there, but did not travel with him in the ambulance. After doctors performed a CAT Scan on § 87(2)(b) he was taken back to the 101<sup>st</sup> Precinct station house at 7:30 AM. He was transported to Queens Central Bookings at 1:45PM.

## Factual Disputes

§ 87(2)(g)

## Assessment of the Evidence

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(b) At one point during his CCRB testimony, he made this allegation against the officer who tasered him, later identified as Sgt. Fabara. Later he made the allegation against the partner of the officer who tasered him. § 87(2)(b) does not even mention this punch in the statement he made regarding the incident while he was being treated at § 87(2)(b). No punch allegation is included in the Notice of Claim § 87(2)(b) filed against the City of New York regarding this case. Neither § 87(2)(b)'s medical records nor his arrest photos provide any physical evidence of injury to his jaw area. § 87(2)(g)

§ 87(2)(b) claimed in both his interview and in the notice of claim he filed that an officer used a taser against him while he was still handcuffed. § 87(2)(g)

§ 87(2)(b) Sgt. Fabara claimed in his statement that he ordered § 87(2)(b) to place his hands behind his back so that he could be handcuffed and that in that after using the taser against § 87(2)(b) in order subdue him, he placed handcuffs on him. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

### Findings of Fact

§ 87(2)(g)

§ 87(2)(g)

**Allegation A: An officer used physical force against** § 87(2)(b)

§ 87(2)(g)

**Allegation B: Sgt. Carlos Fabara used a taser against** § 87(2)(b)

§ 87(2)(g)

“conducting himself in a manner which a police officer reasonably believes is likely to result in serious injury to himself or others.” (P.G. 216-05) (Enclosures 1a-f) § 87(2)(g)

§ 87(2)(b) The sergeant claimed that he warned § 87(2)(b) that he needed to handcuff him and encouraged him to cooperate so that Sgt. Fabara would not have to use a taser to subdue him. When Sgt. Fabara entered the cell to handcuff § 87(2)(b) he asserts that § 87(2)(b) behaved in an aggressive and non-compliant fashion. § 87(2)(g)

**Allegation C: Sgt. Carlos Fabara used physical force against** § 87(2)(b)

§ 87(2)(g)

**Allegation D: Sgt. Carlos Fabara made remarks to § 87(2)(b) based upon race.**

**Allegation E: Sgt. Carlos Fabara spoke obscenely to § 87(2)(b)**

§ 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: